

**STATE OF NORTH DAKOTA**  
**BOARD OF NURSING**

IN THE MATTER OF: )  
 )  
State of North Dakota and the Board )  
of Nursing of the State of )  
North Dakota, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
DeLonce John Martin, R.N. )  
 )  
Respondent. )

**RECOMMENDED  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

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On March 28, 2000, a Complaint was filed with the Board of Nursing of the state of North Dakota ("Board") by Constance B. Kalanek, Ph.D., R.N., the Board's Executive Director, requesting suspension or revocation of license, as well as other administrative action, regarding the license of DeLonce John Martin, R.N. ("Martin"). The Complaint cites as grounds for administrative action violation of N.D.C.C. § 43-12.1-14 (3), (5), (6), and N.D. Admin. Code § 54-02-07-01.1 (5), (6), (7), (8). The Complaint was served on Martin.

On June 2, 2000, the Board requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to the Complaint. On June 5, 2000, Administrative Law Judge Allen C. Hoberg was designated.

On June 14, 2000, the ALJ issued a Notice of Hearing. The notice was served, certified mail, on Martin, mailed to his Washington, D.C. address, an address that he had provided to the

Board for licensing matters. The U.S. Post Office forwarded the notice to Martin at a new Florida address. Martin signed the return receipt. The notice scheduled a July 20, 2000 hearing.

On June 26, 2000, at the request of counsel for the Board, before the return receipt on the notice was received by the ALJ, the ALJ issued a Notice of Rescheduled Hearing (“second notice”), rescheduling the hearing to July 19, 2000. This second notice was served on Martin by both certified and regular mail, at his Washington D.C. address. Both envelopes containing the certified mail and the regular mail were returned to the ALJ. It was noted on one envelope that the forwarding order had expired.

The ALJ then received the return receipt with the Florida address and the Board also contacted the ALJ and related Martin’s Florida address (after having served him in Florida). However, for licensing purposes, Martin did not specifically notify the Board of his change of address from Washington D.C. to Florida. On June 29, 2000, the ALJ served the second notice on Martin at his Florida address by regular mail. The regular mail was not returned to the ALJ. Martin received notice of the July 20 hearing and is presumed to have received notice of the July 19 hearing.

Martin has not contacted the ALJ to inquire about either the July 19 or 20 hearing. Neither has Martin contacted the Board or the Board’s counsel to inquire about the hearings. Martin did not appear on July 20, 2000, for a hearing.

The hearing was held as rescheduled on July 19, 2000, in the Office of Administrative Hearings, Bismarck, North Dakota. The Board was represented at the hearing by Special Assistant Attorney General Calvin N. Rolfson. Martin was not present at the hearing. Martin was not represented at the hearing. Mr. Rolfson presented a prima facie case. Mr. Rolfson called two witnesses, Dr. Kalanek and Carla Bitz, R.N., the Board’s Nurse Consultant. He offered 10

exhibits, all of which were admitted. At the close of the hearing Mr. Rolfson gave oral closing argument.

Based on the evidence presented at the hearing, and the closing argument of counsel, the administrative law judge makes the following recommended findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. Martin is currently licensed by the Board as a registered nurse (“R.N.”) in North Dakota, on inactive status. He is considered currently registered as an R.N. in North Dakota, License Registration # R24726. He was last licensed in North Dakota, on active status, on December 31, 1999. On November 6, 1997, Martin applied for and was granted a two-year license, on active status, for 1998-1999. Exhibit 10. Martin was first licensed in North Dakota, by examination, on August 14, 1991.

2. Martin is also licensed as an R.N. in the state of Virginia. On December 29, 1999, the Board of Nursing of the state of Virginia (“Virginia Board”) issued an Order (Findings of Fact, Conclusions of Law, and Order) regarding Martin’s Virginia license. The Virginia Board found that, while employed as an R.N. in that state and while assigned to a Virginia hospital, Martin signed out four doses of Percocet (a Schedule II controlled substance) for patient G.S., who had no physician’s order for the drug. Martin documented neither the administration nor the wastage of these doses of Percocet. The Virginia Board also found that while employed as an R.N. in that state, while assigned to the Clinical Center Nursing Department at the National Institutes of Health, in Maryland, Martin was confronted with signing out approximately fifty doses of Percocet for approximately sixteen patients who either had no orders for the drug or who were not his assigned patients. The Virginia Board further found that Martin admitted to

diversion of various amounts of Percocet from the Virginia hospital and the NIH for a period of approximately six months. Martin denied self-administration and claimed the diversion was for his father. The Virginia Board concluded that Martin violated § 54.1-3007(2) and (5) of the Code of Virginia and 18 VAC § 90-20-300(A)(2)(c) of the Regulations of the Board of Nursing. As a result of the violations, the Virginia Board ordered that no action be taken against Martin.

Exhibit 8.

3. In North Dakota, the Board investigated Martin, too. See Exhibit 3, Potential Violation Report (“PVR”); Exhibit 6, Virginia Department of Health Professions, September 1999 Report of Investigation concerning Martin and a pharmacist source (“Report”), received or obtained by the Board.

4. The Board asked for Martin’s response to the allegations of diversion in Virginia and Maryland, and offered Martin the possibility of services of the Nurse Advocacy Program. Martin responded to the Board characterizing his actions as “a lapse of bad judgment regarding my professional nursing license...” and as “a profound bad decision.” Exhibit 4, letters from Martin to Board. In one of his letters Martin also cited the Virginia Board, which he said indicated that “this is not a [sic] impaired provider situation.” *Id.* Martin generally admitted diversion in his letters claiming it was done so that he could provide the drugs for his dying father in North Dakota who was in extreme pain.

5. The PVR and Report (Exhibits 3 and 6) document substantial diversion by Martin of three controlled substances, Percocet, Ativan, and Fentanyl Transdermal (*see* Exhibit 7 “PDR - Nurse’s Drug Handbook”), for unauthorized use. *See e.g.*, Exhibit 3, p. 4, showing involvement of 18 separate patients on 19 separate days diverting 114 doses of the three drugs. The PVR and Report also show that the diversion involved patient records (alteration of or falsification of

records) and breaches of patient confidentiality in obtaining the drugs. Again, besides documenting a portion of the diversion, these documents show that Martin admitted to substantial diversion of Percocet over a period of approximately six months. In other words, the actual amount of drug diversion by Martin is likely much more than documented and likely much more than Martin admitted. *See Exhibits 3 and 6.*

6. During the course of the Board's investigation, Martin admitted to Ms. Bitz that he also diverted four Lasix tablets (diuretic medication) for unauthorized use. Lasix is not a controlled substance.

7. On April 23, 2000, Martin wrote to Dr. Kalanek, stating, in part, "I hereby submit my resignation from the North Dakota Board of Nursing..." By making this statement, Martin, apparently, has stated his intent to no longer be licensed by the Board.

8. Dr. Kalanek testified, giving expert opinion about the standards of practice and acceptable nursing practice in North Dakota. It was her opinion that Martin's actions regarding diversion in Virginia and Maryland evidences a pattern of behavior that essentially amounted to the theft of drugs. She also opined that Martin inappropriately used patient records, falsified patient records, and violated patient confidentiality in regard to obtaining the diverted drugs. She further opined that Martin's actions involved totally unacceptable nursing practice.

### **CONCLUSIONS OF LAW**

1. Martin is currently licensed by the Board, on inactive status. His license is subject to administrative action by the Board under N.D.C.C. chapter 43-12.1 and N.D. Admin. Code art. 54-02.

2. The evidence presented at the hearing shows, by the greater weight of the evidence, and Martin's admissions show, that by his actions in 1999, at a Virginia hospital and a Maryland medical facility, Martin violated the provisions of N.D.C.C. § 43-12.1-14 (3), (5), (6). Specifically, Martin's actions evidence a pattern of behavior of unacceptable nurse practice during which he diverted substantial amounts of drugs, much of which are controlled substances, also showing himself to be unfit or incompetent to practice nursing by pattern of behavior and to have engaged in practice inconsistent with the standards of nursing practice.

3. The evidence also shows that Martin violated the corresponding provisions of the above statute, found in rule at N.D. Admin. Code § 54-02-07-01.1 (5), (6), (8), and, additionally, under N.D. Admin. Code § 54-02-07-01.1(7), shows that his actions evidence inaccurate or incomplete documentation or recording, or the falsification, alteration, or destruction of client, employee, or employer records.

4. Under N.D.C.C. § 43-12.1-14, the Board may suspend, revoke, place on probation, refuse to issue or renew a license, or reprimand a licensee or registrant for violations of § 43-12.1-14.

5. N.D.C.C. § 43-12.1-13 authorizes the Board in disciplinary proceedings to impose fees of up to one thousand dollars or the assessment of costs and disbursements, or both, against respondents in addition to any licensure or registration sanctions the board may impose.

### **RECOMMENDED ORDER**

The greater weight of the evidence shows that Martin violated North Dakota law as stated in the Conclusions of Law, and as demonstrated in the Findings of Fact. Counsel for the Board characterized Martin's actions not as reflecting poor judgment but, rather, as intentional, consistent actions over a relatively long period of time, as egregious and, essentially, criminal

actions. Counsel further said that Martin's actions show abhorrent professional practice. Counsel made recommendations to the ALJ which the ALJ believes are appropriate under the circumstances. Because of Martin's violations of N.D.C.C. § 43-12.1-14 and N.D. Admin. Code § 54-02-07-01.1, it is ORDERED that, Martin's North Dakota R.N. license is REVOKED. Additionally, it is ORDERED that for the above violations, Martin is assessed a fee of \$1000.00. Additionally, it is ORDERED that for the above violations, Martin shall pay the actual costs and disbursements involved in this administrative matter as certified by the Board's Executive Director, of which amount the Board shall notify Martin by separate letter. By such separate letter the Board shall also state the time and method for payment by Martin of imposed fees and costs and disbursements.

Dated at Bismarck, North Dakota, this 7th day of July, 2000.

State of North Dakota  
Board of Nursing

By: \_\_\_\_\_  
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Administrative Law Judge  
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